

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
143778)	Billed Entity No.
Request for Review of the)	
Decision and Waiver of the Decision of the)	Form 471 No. 478400
Universal Service Administrator by)	
)	CC Docket No. 96-45
SANTA ANA UNIFIED SCHOOL DISTRICT)	
SANTA ANA, CA)	CC Docket No. 02-6
)	
Schools and Libraries Universal Service)	
Support Mechanism)	

I. INTRODUCTION

1. The Santa Ana Unified School District, (District) appeals the decision of the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding due a failure to provide to the USAC a properly executed implementation extension request prior to the deadline.
2. The District believes that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
3. The District requests that the Commission review the decision of USAC denying funding on a Form 471 application because confusion existed as to the proper time to file the implementation extension request. Part of the confusion was due to USAC's delay in responding to District's request for clarification concerning the rule as to when the request could/should be filed.
4. District was not able to file the implementation extension request by the deadline because District could not file a Form 486 to begin service because the SLD procedure for deleting entities had not been developed.
5. While FCC Report and Order (FCC 01-195) states that the SLD may grant an extension of time for the implementation of non-recurring services if the implementation is delayed for circumstances beyond the named service provider's control, the SLD held that District had failed to establish such circumstances.
6. On January 25, 2008, District appealed the SLD decision to the USAC. On February 15, 2008, District received a letter from USAC stating that the Appeal had been denied.

II. BACKGROUND

1. February 4, 2005 -- The District signed a contract with IBM for Internal Connections for Sierra Intermediate School and Willard Intermediate School.

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2. February 17, 2005 -- The District submitted a Form 471 #478400 FRN#1321660 with 38 schools on the block 4 including Sierra Intermediate School and Willard Intermediate School.
3. July 19, 2005 -- PIA reviewer acknowledged that FRN 1321660 is only for Sierra Intermediate and Willard Intermediate.
4. October 12, 2005 -- FCDL issued.
5. October 19, 2005 -- The District begins preparing 3 year plan for Internal Connections and discovers that 38 sites were listed on Block 4 for FRN# 1321660.
6. October 20, 2005 -- The District asks SLD question regarding the listing of 38 sites when the contract was only for 2 sites. SLD response was that all 38 sites would be counted in the 2 out of 5 rule.
7. October 26, 2005 -- IBM representative Tony Wening e-mails Paul Stankus at the SLD and asks for assistance in resolving the Block 4 entity error.
8. December 1, 2005 -- Paul Stankus replies that there is no procedure for splitting a Block 4 once it has been funded.
9. December 1, 2005 -- Tony Wening contacts John Noran, at the SLD
10. December 2005 -- The District calls SLD and requests options for dealing with FRN1321660. The District is told the only option is to decline the award. The District continues to work with SLD on the possibility of deleting entities from Block 4. The District investigates reapplying for Sierra and Willard electronics for Year 9.
11. February 2006 -- The District applies for electronics for Sierra and Willard (the same schools in the Y8 application) for Year 9, filing Form 471 #512792 FRN #1410715 .
12. March 2, 2007 -- SLD issues procedures for removing entities from Block 4.
13. March 30, 2007 -- The District applies for removal of entities for FRN 1321660. The case number is 21-575012.
14. April 3, 2007 -- SLD notifies District that Case number 21-575012 has been forwarded to the correct dept.
15. April 24, 2007 -- The District receives FCDL denying funding for Year 9 Form 471 #512792, FRN #1410715.

16. August 2, 2007 -- The District contacts SLD to inquire about the status of Case number 21-575012.
17. September 11, 2007 -- The District received approval of the entity removal.
18. October 2, 2007 -- The District filed FRN extension request for FRN #1321660.
19. December 3, 2007 -- The District receives notice that the SLD had denied the FRN extension.

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III. WHY THE DISTRICT DID NOT FILE ITS FRN EXTENSION REQUEST EARLIER

1. The District worked with the SLD staff to get entities removed from its FRN for 23 months and believed that the request to remove entities would be treated the same as extensions for FCDL's and service substitutions granted after March 1 since the entity removal was granted after March. The District considered their request to remove entities from the FRN an amended FCDL and thus would automatically be given an FRN extension until September 30, 2009.
2. If the District's request to remove entities from its FRN was denied by the SLD, the District planned to refuse funding for that FRN.
3. The District further assumed that filing the FRN Extension Request would complicate and confuse the issue of removing the entities.

IV. DECISIONS BY THE COMMISSION ON APPEALS

1. As noted in the decision published in the Bishop Perry Middle School, New Orleans, LA appeal, SLD # 487170, the "Commission may waive any provision of its rules on its own motion and for good cause shown" (47 C.F.R. §1.3.) Additionally, a "rule may be waived where the particular facts make strict compliance inconsistent with the public interest" Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).
2. In the Bishop Perry Middle School case, the Commission also made the following Additional Processing Directives for USAC. "As of the effective date of this Order, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors.

USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window. The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should be sufficient time to correct truly unintentional ministerial and clerical errors. The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding.”

3. In the Request for Review filed by Glendale Unified School District, File No. SLD-143548 decided on February 1, 2006, the Commission once again held that “The Commission may

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waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”

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V. DISCUSSION

1. The District believes that under the circumstances described above, the fact that they did not submit a FRN Extension Request before the deadline was an

inadvertent, ministerial or clerical error. In addition, the District did attempt to resolve the issue over a long period of time with the SLD, as shown above in Section II.

2. The District relies on the order in the Bishop Perry case, cited above at IV., 1 and 2, which stated “we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. The decision went on to state, “The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding.” In the Bishop Perry case, the Commission reviewed the appeals of numerous districts who had made a number of errors in the submission of their applications for E-rate funding. The problem could have been corrected had the USAC provided the District with any guidance during the long months of communication between District and the SLD. Again, the Bishop Perry decision clearly indicates “USAC shall also inform applications promptly in writing of any missing or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications.” District believes this directive also applies to the situation in which District finds itself and, had the USAC alerted District to the apparent problem at any time during the process, it could have been corrected immediately.

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3. The District, as shown in Section II. above, attempted to resolve the issue on an ongoing basis over 23 months. Had the SLD provided answers as to how to delete entities from Block 4 of the Form 471 in a timely fashion, the project would have proceeded and the necessity of an Extension Request would have probably been avoided.
4. The District also assumed that the FRN extension would be granted automatically as is done with service substitutions and FCDL’s issued after March since the entity removal was granted after March.
5. Additionally, the District assumed that filing the Extension Request, while the issue of deleting entities for the Block 4 was still unresolved, would complicate and confuse the situation.
6. The District made the decision not to proceed with implementation of FRN 1321660 because of the uncertainty created by the SLD’s lack of a procedure to delete entities for Block 4 of the Form 471. Thus the implementation was delayed for circumstances beyond the service provider’s (IBM’s) control of IBM and thus falls under the reasons for granting FRN extensions.
7. The District also relies on the decision in the Glendale Unified School District appeal as cited above. In Glendale, the applicant filed a Form 471

which showed an incorrect service start date. When they submitted a corrected form to the SLD, it was not accepted as it was deemed new information. The Commission granted their Request for Review and Waiver, stating that “We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors. We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the “Act”), by helping to ensure that Glendale obtains access to discounted telecommunications and information services.” District believes that its own error is substantially similar to the error cited in the Glendale appeal and the Commission should grant District’s Request for Review and Waiver.

III. CONCLUSION

For the reasons discussed herein, district respectfully requests the Commission grant the Request for Review and Waiver and Remand the case to the USAC for further consideration pursuant to the E-Rate rules.

Submitted March 5, 2008

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